IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.39 of 2000

Reserved on : May 11, 2007.

Decided on : June 1, 2007

Bishan Dass and others **…..Appellants.**

VERSUS

State of H.P. **…..Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellants : **Mr. K.D. Sood, Advocate, with Mr. Sanjeev Sood, Advocate.**

For the Respondent : **Mr. Ashok Chaudhary, Additional Advocate General.**

Surjit Singh, Judge

By this appeal the appellants have assailed the judgment of the Sessions Court, dated 15.1.2000, whereby they have been convicted of offences punishable under Sections 452, 342 and 304 (Second Part) read with Section 34 IPC and sentenced as follows:

Under Section 304 (Second Part) read with Section 34 IPC.	Rigorous imprisonment for five years and fine of Rs.10,000/-, each; in default of payment of fine to undergo rigorous imprisonment for a further period of one year.
Under Section 452 read with Section 34 IPC.	Rigorous imprisonment for six months and fine of Rs.500/-, each; in default of payment of fine to undergo rigorous imprisonment for a further period of one month.
Under Section 342 read with Section 34 IPC.	Imprisonment for three months each.

Whether the reporters of the local papers may be allowed to see the Judgment?

2. Appellants' plea is that the evidence on record does not prove the commission of any of the aforesaid offences and that they are entitled to acquittal.

3. Appellants were sent up for trial for offences punishable under Sections 302, 452 and 342 read with Section 34 IPC, for allegedly committing house trespass by entering the house of deceased Joginder Singh in furtherance of their common intention to kill said Joginder Singh and after committing the aforesaid trespass they wrongfully confined Joginder Singh's wife Reeta Devi in a room of Joginder Singh's house, when she tried to come to his (deceased Joginder Singh's) rescue and also committed the offence of murder by beating said Joginder Singh to death, by means of a half brick and a *Danda* which they were carrying in their hands at the time of the committing of house trespass.

4. It was alleged that on 9.8.1998 around 9 p.m. when deceased Joginder Singh returned home and had just entered his bedroom, all the three appellants armed with *Dandas* and bricks made forcible entry into that room and started pulling him out and giving beating to him. When PW-4 Reeta Devi, the wife of deceased Joginder Singh, tried to rescue him she was pushed inside the room and the room was chained from outside. PW-5 Kirlu Ram, father of Joginder Singh, who was present in the adjoining room, came out on hearing the cries of deceased Joginder Singh. He tried to rescue his son but he was pushed, as a result of which he fell down and became unconscious. After beating Joginder Singh severely, the appellants fled away. PW-6 Kaushalya Devi, who has her house just opposite the house of deceased Joginder Singh, also came out on hearing the cries. She felt the pulse of

Joginder Singh and declared that he was dead as there was no pulse beat. Next day, PW-5 Kirlu Ram, accompanied by Pradhan Gram Panchayat PW-6 Smt. Shabda Kumari, went to the Police Station and lodged the report, Ex. PD. The Police visited the site. Inquest was conducted, dead body was sent for postmortem. Following injuries were noticed by PW-1 Dr. D.P. Swamy, who conducted the postmortem:

EXTERNAL APPEARANCE

Male body 5' X 5" long well nourished and built. Rigor mortis in developing stage. Hypostasis purplish fixed on back and dependent parts. Body cooled externally and internally due to ice packs covered body. Blood stains seen from left ear and nostrils.

CRANIUM AND SPINAL CORD

3 x 2" on the left side of the scalp, temple area, reddish, tailing behind forwards.

2. Fracture of left temporal bone, depressed, 3" X 2" area.

3. Sub dural haemorrhage 3" X 3" in the left middle cranial fossa, clotted, and reddish.

THORAX

Sr. No.1 and 6: Nothing abnormal detected.
Sr. No.2 to 5: congested.

ABDOMEN

Sr. No.1,2,3 and 11: Nothing abnormal detected.
Sr. No.4 Stomach and its contents were shown 20cc semi digested pale food. No smell of alcohol or poison detected. Walls normal.
Sr. No.5: Small intestines and their contents: 60 ml. semi digested food, pale no smell of alcohol or poison. Walls were normal.
Sr. No.6 Large intestines and their contents: were shown full of gasses and faecal matter of brownish and pale colour in proximal and mid part.

Liver, spleen and Kidney were congested.

Sr. No.10 Bladder 30 cc urine pale. No smell of alcohol or poison. Walls were normal.

MUSCLES BONES AND JOINTS

1. Bruise on left cheek, mid portion (left maxilla area) 3" X 1½" area, reddish, tailing above downwards.

2. Hair line fissured fracture of left maxillary bone irregular 2" long with clotted reddish blood in area.

The doctor opined that the cause of death was asphyxia due to ante mortem injuries to brain (left side) leading to neurogenic shock. He also opined that the injuries could have been caused by striking with a *Lathi* and a brick. He also stated that the time lag between the injuries and the death was 15 minutes to six hours. Police took into possession *Danda* Ex. P-1, brick Ex. P-2 and clothes Ex. P-3 and Ex. P-4 of the deceased. The same were sent to the Chemical Examiner, who, vide report Ex. PG, opined that shirt of the deceased bore stains of human blood.

5. On completion of investigation, challan was filed in the Court of concerned Judicial Magistrate, who after complying with the provisions of Section 207 Cr.P.C. committed the case to the Sessions Court. The Sessions Court charged the appellants with offences under Sections 452, 342 and 302 read with Section 34 IPC and on conclusion of trial convicted and sentenced them, as aforesaid.

6. Besides examining PW-1 Dr. D.P. Swamy, Lecturer Forensic Medicines, Dr. R.P.M.C.H., Dharamshala, who conducted the postmortem examination and some other formal witnesses, including the Investigating Officer PW-13 Inspector Jagdish Chand, the prosecution examined Reeta Devi PW-4, wife of the deceased, PW-5 Kirlu Ram, the father of the deceased, PW-6 Kaushalya Devi, a relative of the deceased and the resident of the house opposite the house of the deceased, and Shabda Kumari PW-10, Pradhan of the Gram Panchayat, to whom the matter was reported first.

7. As per the testimony of the doctor, there was fracture of left temporal bone in an area of 3" X 2". Also, there was sub dural haemohhrage 3" X 3" in the left middle cranial fossa, which was clotted and reddish. Doctor also noticed hair line fissured fracture of the left maxillary bone irregular 2" long. The statement of the doctor shows that the deceased was hit above the neck. As per opinion of the doctor the injuries could have been caused by means of *Lathi* and brick blows and the time lag between the infliction of the injuries and the death could have been from 15 minutes to 6 hours. On being shown *Danda* Ex. P-1 and a half brick Ex. P-2 and asked if the injuries could have been caused by hitting with the same, he said that the injuries were possible with these weapons.

8. PW-4 Reeta Devi testified that her husband retuned home from Bazaar around 9 p.m. and that as soon as he entered the room appellants Bishan Dass, Bhukari Devi and Poonam Devi also entered her room and started giving beating to her husband and pulling him outside the room. She stated that when she intervened she was pushed inside the room while her husband was pulled and dragged out and that the room was chained from outside. She testified that appellant Bhukari was carrying a *Danda* and appellant Bishan Dass a brick and that they gave beatings to her husband with the said *Danda* and the piece of brick and Poonam kicked and fisticuffed her husband. She stated that her husband was hit on shoulders and head. She further stated that she saw the appellants giving beating to her husband through a window of the room in which she had been confined.

9. PW-5 Kirlu Ram, the father of the deceased, stated that the deceased (his son) returned home around 8 or 9 in the night and

that as soon as he entered his room the three appellants came there and started dragging him out. He also stated that Bhukari was carrying a *Danda* and Bishan Dass a piece of brick. He stated that when the appellants started pulling his son out of his room, his daughter-in-law Reeta Devi PW-4 tried to intervene but she was pushed inside the room and the room was then chained from outside and his son was beaten up by the three appellants. He stated that Bhukhari Devi dealt *Danda* blows while Bishan Dass hit his son on the head with the piece of brick and appellant Poonam gave him kick and fist blows. He stated that he came out of his own room and requested the appellants to spare his son but no heed was paid to his entreaties. He further stated that on hearing the commotion his brother's wife came out of her house and on seeing her, the appellants fled away.

10. PW-6 Kaushalya Devi is the wife of the brother of PW-5 Kirlu Ram. She stated that her house is opposite the house of PW-5 Kirlu Ram and there is a common courtyard for her house and Kirlu's house. She stated that on the relevant date around 9 in the night she heard noise and then she opened the door and came out of the room and saw that the appellants, namely Bishan Dass, Bhukari and Poonam were running away from the courtyard while Joginder was lying in the courtyard. She further stated that Reeta Devi was inside the room. Further she stated that when she felt the pulse of Joginder she noticed that it was not beating. She stated that the deceased was taken inside the room.

11. There is no reason to disbelieve the testimony of PW-4 Reeta Devi, the wife of the deceased, PW-5 Kirlu Ram, the father of

the deceased, and PW-6 Kaushalya Devi, the aunt of the deceased, about the occurrence. There was no prior enmity between the parties. Also, there was no other motive for the witnesses to falsely name the appellants as the assailants and killers of Joginder Singh. No suggestion was thrown to the witnesses that there was any enmity or any other reason for them to depose falsely against the appellants. Also, no explanation has been offered by the appellants in their statements for the aforesaid three witnesses deposing against them. A loose suggestion was put to the witnesses that the appellants did not go to the house of the deceased nor did they give beating to him and that a false story has been cooked up at the instance of the police. The fact remains that Joginder Singh died as a result of use of violence against him. The fact is proved by the unchallenged testimony of PW-1 Dr. D.P. Swamy. It is not the case of the appellants that someone else was involved in the killing of the deceased or that the deceased sustained the fatal injuries in some accident. Under these circumstances, the plea suggested to the eye-witnesses in the course of their cross-examination that the police has cooked up a false story in connivance with the eye-witnesses cannot be believed.

12. It was urged that though the incident had taken place at 9 p.m. and it was not a late hour in the night, in the month of August, and the Police Station, as per admission by the prosecution witnesses, is at a short distance of 2½ Kilometers from the place of occurrence, the FIR had been lodged on the next day at 1 p.m. and no explanation for such a long delay has been put forward. It has come in the evidence of PW-4 Reeta Devi, in the course of her cross-

examination, that around 10 p.m. Puran Chand and Dev Raj, two residents of the village, reached her house and they went to call a doctor and after some time the doctor reached. The statement indicates that PW-4 Reeta Devi, the wife of the deceased, and PW-5 Kirlu Ram, the father of the deceased, were under the impression that the deceased was still alive and they started taking steps to save his life. That was more important than rushing to the Police Station to lodge the report, in the facts and the circumstances of the case, particularly the fact that the deceased was having injuries on his head and temporal region. It appears from the evidence that Kirlu Ram, the father of the deceased, was perhaps the only male member in the family who could have gone to inform the police but he, as per his testimony as PW-5, is a man of 70 years and, therefore, he could not have been expected to got to the police in the night, particularly when his son was having serious injuries on his head and temporal region and he was making efforts to call a doctor. Next following day he went to PW-10 Shabda Kumari, Pradhan of the Panchayat, around 9 or 10 and reported the matter to her. The fact is testified not only by PW-5 Kirlu Ram but also by PW-10 Shabda Kumari, Pradhan of the Gram Panchayat.

13. PW-8 Puran Chand testified that on 9.8.1998 around 11.30 a.m. Kirlu Ram visited his house and informed that Joginder had been beaten up by Bishan Dass, Bhukari and Poonam, appellants and asked him to visit his house to see his condition. He stated that he went to the house of the deceased and advised Kirlu Ram to take his son to the hospital and that before that some doctor from a nearby place be called. He stated that he himself went to call

a doctor. He testified that he brought Dr. Suresh to the spot, who declared that Joginder was dead. In the light of these facts and circumstances, it cannot be said that there is any unexplained delay in the lodging of the FIR. In any case the alleged delay in lodging the FIR is of little consequence, because there is absolutely no material on record that there were any discussions or deliberations before the lodging of the FIR nor have the appellants pleaded any version different from that of the prosecution.

14. It was also pointed out that no blood was found on the spot by the Investigating Officer and this indicated that the incident had taken place not at the house or the courtyard of the deceased, as testified by the eye-witnesses, but elsewhere and, therefore, the statements of the eye-witnesses cannot be believed.

15. As a matter of fact, the deceased appears to have not sustained any bleeding injury. The blood was seen oozing only from left ear and nostrils, probably on account of the head injury. The injuries on the head and left maxilla area were not bleeding injuries. This is clear from the testimony of PW-1 Dr. D.P. Swamy and the postmortem report Ex. PW-1/A issued and proved by him. Now, if there was no bleeding injury, how can the blood have been there in the courtyard.

16. As an upshot of the above discussion, it is held that the appeal is without merit. The same is, therefore, dismissed.

June 1, 2007(sd) **(Surjit Singh), J.**